

FILED

ROBERT D. DENNIS, CLERK

¹In his Petition, Bruner has referred to attached exhibits and supporting documents. The record reveals that no exhibits or documents were attached to, or submitted with, the Petition at the time it was filed.

Bruner's Petition is subject to the one-year statute of limitations established by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), as amended, and the one-year period provided by AEDPA for seeking federal habeas relief expired on February 21, 2009. The instant Petition filed on October 27, 2009, is therefore time-barred unless Bruner can establish that the limitations period has been tolled.

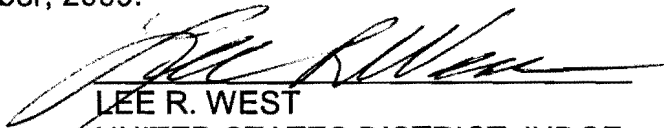
In reviewing Bruner's papers, the Court finds that Bruner not only is not entitled to statutory tolling, e.g., 28 U.S.C. § 2244(d)(2)(time during which properly filed application for state post-conviction or other collateral review pending not counted), since Bruner did not pursue post-conviction relief in state court, but also is not entitled to equitable tolling in this instance. Bruner has failed to present any "extraordinary circumstances," Clark v. Oklahoma, 468 F.3d 711, 714 (10th Cir. 2005)(quoting Marsh v. Soares, 223 F.3d 1217, 1220 (10th Cir. 2000)); e.g., Gibson v. Klinger, 232 F.3d 799, 808 (10th Cir. 2000)(petitioner only entitled to equitable tolling "in rare and exceptional circumstances"), that would justify equitable tolling in this instance. Neither Bruner's arguments, including those based on ineffective assistance of trial and appellate counsel, nor Bruner's authorities cited in his Objection to Report and Recommendation provide a basis that would excuse Bruner's untimeliness in filing the instant action.

Accordingly, the Court

(1) ADOPTS the Report and Recommendation [Doc. 5] issued on November 19, 2009; and

(2) DISMISSES Bruner's Petition as untimely-filed.

ENTERED this 29th day of December, 2009.


LEE R. WEST
UNITED STATES DISTRICT JUDGE